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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,881	08/20/2003	Robert James Vimini	PDF-104US	5224
54350	7590	08/14/2006	EXAMINER	
RATNERPRESTIA P.O. BOX 980 VALLEY FORGE, PA 19482-0980			PEARSE, ADEPEJU OMOLOLA	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/643,881

Applicant(s)

VIMINI ET AL.

Examiner

Adepeju Pearse

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 13-15, 18-28, 32-41, 44-65 and 67.
Claim(s) withdrawn from consideration: 1-12, 16, 17, 29-31, 42, 43 and 66.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

10/643,881

Examiner

Adepeju Pearse

Applicant(s)

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The amendment document filed on 21 July 2006 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☒ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☒ C. Other Drawings not labelled.
- ☐ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☐ E. Other: _____.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.

Response to Arguments

1. Applicant's arguments filed 7/21/2006 have been fully considered but they are not persuasive. In response to applicant's remarks that Berrier et al failed to disclose the particularly claimed arrangement of the elements as instantly claimed. However, Berrier et al disclose a useful film for a package comprising one layer (0017), the film comprising one or more polyamides at least about 90% by weight (0018), wherein nylon 66 is a disclosed polyamide (0036). Berrier et al disclose each limitation as instantly claimed and therefore anticipates applicant's invention. Applicant argues that Berrier et al failed to disclose in any single example a film including the limitations as instantly claimed. However, the fact that Berrier et al does not an example with applicant's claimed limitations does not mean the claim is not anticipated. Berrier et al has disclosed in the specification applicant's instantly claimed limitations that is nylon 66 (0036), a one layer film (0017) and at least 90% (0018), which are all directed to a package for a food product as instantly claimed. Applicant is reminded that the example disclosed by Berrier et al is not a representation of the entire disclosure of the invention. The rejection of record does not rely on the alleged example.
2. Applicant argues that the exhaustive list in Berrier et al is nothing more than speculation as to their theoretical application and does not place the presently claimed invention within the possession of the public. However, Berrier et al has disclosed specifically each limitation as instantly claimed i.e. nylon 66 (0036), one layer film (0017), and at least 90% by weight (00180 which is directed as a whole to a packaging bag for food products as claimed.
3. Applicant argues that the rejection does not satisfy the "at once envisaged" test under MPEP 2131.02. However, Berrier et al disclose the limitations as claimed by applicant, which

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are directed to a packaging bag. Berrier et al show a one layer film, nylon 66 and at least 90% by weight as instantly claimed. These teachings as a whole are directed to a packaging bag as instantly claimed. The test as set forth in MPEP 2131 is not applicable as the teaching of the disclosure is not a genus.

4. Regarding the specificity of the range, applicant argues that Berrier et al failed to show a range with sufficient specificity. In addition, applicant argues about the evidence of unexpected results with the narrow range. It is unclear why applicant is showing unexpected result based on an anticipation rejection. Besides, Berrier et al disclosed the limitation “at least 90%” (0018), which is specific to the weight percent of the film as instantly claimed. MPEP 2131.03 is not limited to examples to show anticipation.

5. Regarding applicant’s comparison between *In re Arkley* and the present facts, Applicant states that Berrier et al failed to identically describe the claimed monolayer film comprising at 90% nylon 66. The examiner disagrees because Berrier et al disclose a one-layer film (0017), comprising one or more polyamides at a weight percent of at least 90% (0018), wherein the polyamide includes nylon 66 (0036).

6. Applicant argues that Berrier et al states that the monolayer embodiment is not shown. However, Berrier et al disclose that the film may be a 1-9 layer, e.g. a monolayer. This is positively recited in (00160. The fact that it is not shown does not mean it is not anticipated.

7. Regarding the sealant layer, Berrier et al disclose that the sealant may comprise more than one layer and a first polyamide may be at least 90% by weight (0042).

8. Applicant argues that nylon 66 is not disclosed. However, Berrier et al expressly states nylon 66 as a polyamide (0036).

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9. Applicant asserts that the monolayer films comprising nylon 66 were not contemplated by Berrier et al because of Table 4 disclosing 60% nylon 66, monolayer bag. However, Berrier et al disclose that the film may be one layer (0017) comprise nylon 66 (0036) and be at least 90% by weight of the film (0018). It is therefore unclear how applicant asserts that nothing clearly and unequivocally directs one skilled in the art to combine the claimed elements especially when Berrier et al have expressly stated them.

10. Applicant argues that none of the example films showed a monolayer film of nylon 66. However, as previously stated, the fact that a monolayer film is not shown by way of example does not mean the limitation is not anticipated especially when it has been expressly stated that a useful film may be one layer (0017), comprise at least 90% by weight (0018) and could a polyamide such as nylon 66 (0036).

11. Applicant argues that Berrier et al teaches away from the presently claimed combination of elements. It is unclear how Berrier et al teaches away from the instant combination, when it has been expressly stated in the specification that a useful film may be one layer (0017), comprise at least 90% by weight (0018) and could a polyamide such as nylon 66 (0036). Applicant also states that the disclosure of elements is not found within the same paragraph. However, the teaching of the reference is taken as a whole and is directed to a packaging bag as instantly claimed. The teaching of the reference is taken as a whole. The standard for anticipation is not limited to one paragraph. Applicant is invited to submit citation of the statute indicating such standard.

12. Regarding applicant's declaration and the Reynolds Oven bag. The declaration is not deemed persuasive. It is unclear why applicant is showing evidence of unexpected result based

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on an anticipation rejection. The declaration is not antedating the reference. In addition, the declaration was not filed timely because it was filed after the final rejection.

13. Applicant states that the Reynolds Oven bag is 60% nylon 66, whereas the claimed invention requires a film of at least 90% by weight. As previously stated, Berrier et al shows that a film comprising at least 90% by weight nylon 66 can be utilized. This range is not overlapping, it is the exact same range instantly claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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